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| 09/701,478      | 02/01/2001  | Luther Stoddard      | 17427-US            | 1172             |

7590

02/28/2003

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EXAMINER

KIM, EUGENE LEE

ART UNIT

PAPER NUMBER

3721

DATE MAILED: 02/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/701,478

Applicant(s)

STODDARD ET AL

Examiner

Eugene Kim

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 03 December 2002.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11 is/are allowed.
- 6) ☒ Claim(s) 1-10, 12-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. Claims 1-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis in view of Andersson et al as discussed in paragraph 2 of the last office action.
2. Claims 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davis as discussed in paragraphs 4 and 5 of the last office action. Regarding the ink on the neck, Davis shows a bag code pressed in the neck rather than including anything in the way of printing inks etc (p. 7 5<sup>th</sup> paragraph). The examiner reads this claim in a broad context. The ink is claimed as "may be softened by heat" which is a capability type limitation. Davis discloses that printing inks are known but rather uses a pressed bag code to provide information or identity to the bag. It would have been obvious to one of ordinary skill in the art to use ink which is a mechanical equivalent to the bar code of Davis since ink does not solve any stated problem. Furthermore, applicant concedes that it is known to provide bakery products with printed bags in p. 9 5<sup>th</sup> paragraph of the remarks.
3. Claim 11 is allowed.
4. Applicant's arguments filed 1/29/2003 have been fully considered but they are not persuasive.

In response to applicant's argument regarding the actual location of where the heating takes place in claims 1-3 and 5-10 the examiner notes that Andersson et al disclose that it is known to restrict the heating to a defined region that may be readily regulated (col 1 lines 30+). As the examiner stated in the previous office action, little

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patentable weight is given to the location of parts unless there is some criticality or unexpected result from the location. The actual location of where the heat is applied is a matter of where the user wants to create a seal/bond to close the bag. Regarding claim 2, Davis shows a perforator that forms perforations as claimed and the actual timing of the perforations would have been obvious with the combination of Andersson et al to perform the perforations before the heating step. Perforations 20 of Davis are adjacent to seal line 19 as claimed. The heat sealing means of Davis is being substituted by the hot air blowing means of Andersson et al to seal a desired area that is a matter of where the user wants to seal the bag.

In response to applicants argument regarding claim 4 and claim 12, the examiner reads these claim in a broad context. The ink is claimed as "may be softened by heat" which is a capability type limitation. Davis discloses that printing inks are known but rather uses a pressed bag code to provide information or identity to the bag. It would have been obvious to one of ordinary skill in the art to use ink which is a mechanical equivalent to the bar code of Davis since ink does not solve any stated problem. Furthermore, applicant concedes that it is known to provide bakery products with printed bags in p. 9 5<sup>th</sup> paragraph of the remarks. In response to applicant's argument that the heated wheels 17 would stick to the bag, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art.

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See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). In this case, the examiner is using the hot air sealing means of secondary reference Andersson et al to substitute the heat sealing means of Davis.

In response to applicant's argument regarding claim 14, the examiner maintains position on this limitation set forth in the last office action. Davis discloses many mechanical equivalent closure elements and a twisted ribbon is just another closure element comparable to the ones that Davis listed, such as, wire, tape, plastic clip, etc (p. 8 lines 3+)

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Kim whose telephone number is (703)308-1886. The examiner can normally be reached on Tuesday-Friday 7:30 a.m - 6:00 p.m.

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The fax phone numbers for the organization where this application or proceeding is assigned are (703)305-3579 for regular communications and (703)305-3579 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1148.

A handwritten signature in cursive script, appearing to read "Eugene Kim", followed by a small flourish.

Eugene Kim  
February 25, 2003